

REMARKS

In the Office Action dated February 12, 2004, prosecution was re-opened following the re-institution of Applicant's Appeal, and completely new rejections were entered. Claims 1-4, 6-12 and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over European Application 0 805 419 (Kubatzki et al) and Aas and Gil. The Examiner stated she used United States Patent No. 6,298,337 as a translation of the Kubatzki et al reference, and Applicant has no objection thereto. Claim 6 was rejected under 35 U.S.C. §103(a) based on the aforementioned combination of references, further in view of Rothstein. Claim 15 was rejected under 35 U.S.C. §103(a) as being unpatentable over Kubatzki et al and Aas, further in view of Ezzet et al. (Since claim 13 depends from claim 11, which in turn depends from claim 1, and since the Examiner believed it was necessary to include the Gil reference in the rejection of claim 1, Applicant does not see a reason to not include the Gil reference in the basis for rejecting claim 13.)

All of the above rejections are respectfully traversed for the following reasons.

Applicant does not disagree with the statements of the Examiner regarding the fact that the Kubatzki et al reference teaches a postage meter having an external scale and a modem for receiving rate table data from an external source. The Examiner acknowledged that the Kubatzki et al reference does not disclose the switchover module as set forth in claim 1, performing the functions set forth in claim 1. The Examiner relied on the Aas reference as disclosing a method for controlling a switch on the parallel port of a computer to select between multiple peripherals. Applicant does not disagree with this general statement of the teachings of the Aas reference, but the Examiner further stated that peripherals include modems, meters

and scales, and Applicant does not find any such teaching in the Aas reference and disagrees with this statement if it represents the Examiner's own conclusions. The Examiner stated it would have been obvious to a person of ordinary skill in the art to modify the Kubatzki et al based on the teachings of Aas. The Examiner stated a motivation for combining these references is to effectively control the flow of data into the postage meter or scale.

The Examiner stated that the Gil reference discloses the combination of an electronic postage computing scale and a postage meter. It is not clear how these teachings of the Gil reference entered into the aforementioned rejection, however, Applicant does not disagree that the Gil reference provides this general teaching.

As the Examiner has acknowledged the Aas reference teaches a method for controlling a switch on the *parallel port* of a computer. As disclosed and claimed in the present application, however, the switchover module is for the purpose of, depending on its switching state, downloading rate table data directly from an external source to the postage calculator exclusively via the modem and the switchover module. As stated earlier in claim 1, the rate table data are received from the external source via a modem. Those of ordinary skill in the art know that a modem is a *serial* device. The word "modem" is derived from the term "modulator/demodulator" and of course modulation and demodulation are serial processes. Since the switch described in the Aas reference is specifically designed, as acknowledged by the Examiner, for use at a parallel port, its purpose and function are incompatible with the use of data from a modem (i.e. serial data). This is why the Aas reference makes no mention whatsoever of any connection of a modem either directly or indirectly to the switch disclosed in the Aas reference. This different

and incompatible use (parallel versus serial) of the switch in the Aas reference refutes the Examiner's conclusion that one of the peripherals connected to the switch in Aas reference could be a modem. In fact, since those of ordinary skill in the art know that a modem is a serial device, the fact that the switch disclosed in the Aas reference is for connection to a parallel port would be a reason teaching away from using the Aas switch in combination with a modem. Even if a person of ordinary skill in the art had the insight to use the *concept* of the switch disclosed in the Aas reference (as opposed to its physical structure), in the context of switching data from a modem, this would be an insight supporting patentability, rather than the gating patentability, in view of the parallel nature of the usage for the switch disclosed in the Aas reference.

Moreover, Applicant does not agree with the motivation proposed by the Examiner for making the modification of Kubatzki et al in view of the teachings of the Aas reference, quite apart from the aforementioned technical reasons. The Examiner proposed that a motivation for making such a modification would be a desire to effectively control the flow of data into the postage meter or scale. This is of course a general goal in the design of any system involving data flow, including a system involving a postage meter and a scale. This goal, however, is so general as to provide no guidance, and no sufficiently specific teaching, motivation or inducement, so as to substantiate a rejection under 35 U.S.C. §103(a). The cases cited in the Supplemental Appeal Brief, filed October 31, 2003, beginning at the bottom of page 19 and continuing through the top of page 21, make abundantly clear that more specific evidentiary support must be provided by the Examiner in order to substantiate a rejection under 35 U.S.C. §103(a). Applicant respectfully submits that

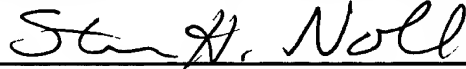
the motivation proposed by the Examiner in the latest Office Action is so general and non-specific as to constitute "mere supposition" on the part of the Examiner, which the Court of Appeals for the Federal Circuit and the Board of Patent Appeals and Interferences have made abundantly clear is not a proper basis for supporting a rejection under 35 U.S.C. §103(a).

As noted above, those of ordinary skill in the art know that a modem is inherently a serially-operating device, however, independent claim 1 has been amended to explicitly include such a description, as well as to state that the switchover module selectively *serially* conducts the aforementioned data downloading. Applicant believes this feature was already inherent in the previous language of claim 1, by virtue of claiming a modem, but Applicant has no objection to making this abundantly clear, if it will advance prosecution.

Claim 1, therefore, would not have been obvious to a person of ordinary skill in the field of postage meter system design based on the teachings of Kubatzki et al, Aas and Gil. Claims 2-4, 6-12 and 14 add further structure to the non-obvious combination of claim 1, and would not have been obvious to a person of ordinary skill in this field for the same reasons discussed above in connection with claim 1.

The same arguments apply to claims 5 and 13. Either the Rothstein nor the Ezzet et al references provides any teaching or motivation that is contrary to Applicant's arguments above regarding the patentability of claim 1, from which each of claims 5 and 13 depends. Therefore, even if the aforementioned combination that was used as a basis for rejecting claim 1 was further modified in accordance with the teachings of either Rothstein or Ezzet et al, the subject matter of claims 5 and 13 still would not result.

All claims of the application are therefore submitted to be in condition for allowance, and early reconsideration of the application is respectfully requested.



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